



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1590 of 2014

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
Divisional Office,
Post Bax No,28,
M.M.Reddy Complex,
Old Bangalore Road,
Hosur-109.

.. Appellant

Vs.

1. Samraj

2. K.Ezhilkumar

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in MCOP.No.706 of 2013 dated 10.12.2013 (Special Sub Judge) at Krishnagiri District.

For Appellant : Mr.J.Chandran

For Respondents : Mr. V.Kumaran R1

Notice served – no appearance For R2



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This appellant/Insurance company has come forward with this appeal, challenging the decree and judgment passed in MCOP.No.706 of 2013 dated 10.12.2013 (Special Sub Judge) at Krishnagiri District contending that the amount of compensation awarded under different heads are excessive.

2.Brief fact which are necessary for disposal of this appeal are as follows:-On 10.06.2004 at about 7.30 P.M. the first respondent/claimant was walking on the left side of the road towards his house at Basthi from Hosur after finishing his flower business in Hosur Bazaar. At the time, the auto bearing Registration No.TMD 7400, which was insured with the appellant, was driven by the second respondent in a rash and negligent manner and dashed against the first respondent, thereby he sustained injuries all over the body. Subsequently, the claimant was taken to Hospital. Thereafter, the claimant has filed petition under Section 166 M.V.Act, claiming compensation of Rs.7,00,000/- before the Motor Accidents Claims Tribunal, Krishnagiri and the same was taken on file in MCOP. No.706 of 2013.



3. Before the Tribunal in order to prove the case, the first respondent/claimant has examined two witnesses viz., PW1 and PW2 and marked Exs.P1 to P8, On the side of the appellant respondent, no witness was examined and no document was marked. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.5,00,302/- as compensation to the claimant under various heads, aggrieved by the said award dated 10.12.2013, the appellant/insurance company has filed this appeal before this Court for reconsideration of the compensation awarded by the tribunal.

4. The learned counsel for the appellant/insurance company would submit that admittedly the present appeal has been filed questioning the negligence of the second respondent driver and quantum arrived at by the Tribunal. The doctor assessed the disability at 45% in which the Tribunal has awarded a sum of Rs.3,36,000/- for permanent disability by adopting the multiplier method. The multiplier method should adopt only in the case of functional disability. In the present case, the first respondent claimed that he is a flower merchant and therefore, there is no chance for loss of earning capacity. Therefore, this Court may recall the same. The learned counsel



would further submit that the tribunal has awarded a sum of Rs.50,000/- towards pain and sufferings, which is highly excessive, which warrants interference.

5. The learned counsel for the first respondent/claimant would submit that the accident had occurred in a rash and negligent driving of the auto driver which was owned by the second respondent and insured with the appellant insurance company. The first respondent is a flower merchant and he was earning at Rs.6000/- per month. The Doctor has assessed the disability at 45% and however, the Tribunal, without considering the Doctor's report, has reduced the disability to 40% and awarded the compensation using multiplier method based on the functional disability, which does not warrant interference. It is also submitted that the compensation awarded by the Tribunal is a just, fair and reasonable and hence, the same does not require any interference in the hands of this Court.

6. Heard the learned counsel for the appellant/insurance company and the learned counsel for the first respondent and also perused the materials available on record.



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7. The present appeal has been filed questioning awarded granted in respect of loss of earning power, pain and sufferings, future medical expenses, partial loss of income and loss of expectation of life.

8. The claimant was inpatient in the hospital from 10.06.2004 to 03.07.2004. For the injuries sustained, the Doctor assessed the disability is at 45% and the Tribunal has reduced the disability to 40% and adopted the multiplier method and awarded a sum of Rs.3,36,000/- towards loss of earning power, which is highly excessive. Accordingly, this Court is inclined accept the disability at 40% and fixes the compensation at Rs.3000/- per percentage ($40\% \times \text{Rs.3000/-} = \text{Rs.1,20,000/-}$). Further, the Tribunal awarded a sum of Rs.50,000/- towards pain and sufferings is exorbitant and the same is reduced to Rs.25,000/- and amount awarded partial loss of income and loss of expectation of life and loss of amenities in life is modified to Rs.10,000/- respectively. It is clear that the claimant is a flower merchant and using multiplier method is not warranted in this case hence this Court is inclined to interfere with the award passed by the Tribunal and the award is modified as follows:



Heads	Amount awarded by Tribunal	Modified Award Amount
Loss of earning capacity	Rs.3,36,000/-	Rs.1,20,000/-
Pain and suffering	Rs.50,000/-	Rs.25,000/-
Partial loss of income	Rs.25,000/-	Rs.10,000/-
Loss of expectation of life and loss of amenities in life	Rs.25,000/-	Rs.10,000/-
Nutrition and Transportation	Rs.20,000/-	Rs.20,000/-
Medical Bills	Rs. 19,302/-	Rs. 19,302/-
Attenders Charges	Rs.10,000/-	Rs.10,000/-
Future Medical expenses	Rs.15,000/-	Rs.15,000/-
Total	Rs.5,00,302/-	Rs.2,29,302/- round off to Rs.2,29,300/-

The amount of compensation awarded by the Tribunal reduced to Rs.2,29,300/- as stated above.

10. In the result, the order of the Tribunal in MCOP. No.706 of 2013 dated 10.12.2013 is modified and this appeal is partly allowed.

11. The compensation amount of Rs.5,00,302/- is reduced to Rs.2,29,300/- with interest at the rate of 7.5% per annum from the date of



petition till the date of realization. The appellant/insurance company is directed to deposit the award amount as ordered by this Court with interest, after deducting the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this order and thereafter, recover the amount from the second respondent. On such deposit, the first respondent/claimant is permitted to withdraw the same on making proper application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

10.10.2023

Index : Yes
Speaking Order : Yes
rli

To

The Motor Accidents Claims Tribunal,
(Special Sub Judge) at Krishnagiri District.



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M.DHANDAPANI,J.

Rli

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